

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Norwell Television, LLC)	CSR-5970-A
)	
Petition For Modification of the Boston, Massachusetts DMA)	

MEMORANDUM OPINION AND ORDER

Adopted: January 13, 2003

Released: January 15, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Norwell Television, LLC, licensee of television broadcast station WWDP (Ch. 46), Norwell, Massachusetts ("WWDP"), filed the above-captioned petition for special relief seeking to modify the Boston, Massachusetts designated market area ("DMA") to include the Charter Communications ("Charter") cable system community of Westport, Massachusetts and unincorporated areas of Bristol County, Massachusetts.¹ No opposition to this petition has been received.² For the reasons discussed below, we grant the petition.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Broadcast Signal Carriage Issues ("*Must Carry Order*"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.³ A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.⁴ A DMA is a geographic market designation that defines each television market exclusive of

¹WWDP states that it listed Bristol County as a whole as part of its request because it wanted to ensure that it is carried in all areas of the county served by the Westport headend. It is therefore the relevant unincorporated portions of Bristol County, and not the entire county, which will be considered as included in WWDP's request.

²WWDP informed the Bureau that it had concluded a retransmission consent agreement with Charter wherein Charter agreed not to file an opposition to WWDP's request for modification.

³8 FCC Rcd 2965, 2976-1977 (1993).

⁴Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where
(continued...)

others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.⁵

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.⁶

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as –

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.⁷

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television

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available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. §534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. See *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

⁵For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁶47 U.S.C. §534(h)(1)(C).

⁷*Id.*

station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

* * * *

[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.⁸

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.⁹

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas.

Note to Paragraph (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.¹⁰

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

⁸H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

⁹*Must Carry Order*, 8 FCC Rcd 2965, 2977 n. 139.

¹⁰The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

(5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.¹¹

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

III. DISCUSSION

5. The issue before us is whether to grant WWDP's request to include the community of Westport and unincorporated areas of Bristol County, Massachusetts, within WWDP's television market. WWDP is located within the Boston, Massachusetts DMA, while Bristol County, Massachusetts, where the cable communities at issue are located, is in the Providence, Rhode Island-New Bedford, Massachusetts DMA.

6. In support of its request, WWDP argues that the subject communities should be added to its television market because it is a "specialty" station which broadcasts home-shopping programming; it provides predicted Grade B coverage to the communities; it is geographically close, at an average of 22 miles from the communities; Charter carries other Boston market stations that are located farther away than WWDP; and it provides programming serving the public interest which is not provided by any other station Charter carries.¹²

7. WWDP states that it is a full power commercial television station which primarily broadcasts home-shopping programming provided by America's Collectibles Network, Inc.¹³ WWDP states that it also broadcasts programming consisting of local public affairs, children's programming, emergency broadcasts and program-length presentations of local and national businesses and community organizations.¹⁴ WWDP points out that the Commission previously found that "broadcast stations that are predominantly utilized for the transmission of sales presentations or program length commercials serve the public interest."¹⁵ Since that time, the Commission has repeatedly held that home shopping stations

¹¹ 47 C.F.R. §76.59(b).

¹² Petition at 1-2.

¹³ *Id.* at 3. WWDP states that prior to July 1, 2002, it was primarily a Spanish-language station which broadcast the programming of the Telemundo Network. *Id.* at 4, n. 7.

¹⁴ *Id.* at 3.

¹⁵ *Id.*, citing *Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992; Home Shopping Station Issues*, 8 FCC Rcd 5321, 5330 (1993).

qualify as specialty stations.¹⁶

8. The first statutory factor we must consider is “whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community.”¹⁷ WWDP notes that there is no record that Charter or its predecessor-in-interest has ever carried its signal on its system.¹⁸ WWDP notes, however, that Charter has historically carried numerous other stations that, like WWDP, are part of the Boston DMA.¹⁹ WWDP argues that Charter’s carriage of “other stations located in the same area” satisfies the historical carriage factor. Moreover, while the Commission is statutorily obligated to weigh historical carriage in analyzing market modification cases, WWDP notes that the Commission has determined that “the historical carriage factor is not controlling in all circumstances because if so interpreted the 1992 Cable Act would, in effect, prevent home shopping and other specialty stations which cable systems had previously declined to carry, from ever being carried.”²⁰ WWDP points out that the Commission has a long record of both adding and refusing to delete communities from a specialty station’s market even in situations where the specialty station could not demonstrate historical carriage.²¹ As a result, WWDP argues that its failure to demonstrate historical carriage of its signal with regard to Charter’s communities herein should not be controlling in this instance.

9. Second, we consider “whether the television station provides coverage or other local service to such community.”²² WWDP states that, as demonstrated by signal contour coverage maps, it provides predicted Grade B contour coverage over Westport and predicted City Grade, Grade A or Grade B contour coverage over most of the rest of Bristol County.²³ Moreover, WWDP states that, as demonstrated by terrain coverage maps, there are no mountains, valleys, or waterways which degrade the reception of WWDP’s signal in the communities.²⁴ WWDP maintains that it is also geographically close to the communities, at an average of 22 miles.²⁵ WWDP argues that, as a general matter, Grade B coverage demonstrates local service to the cable communities.²⁶ WWDP maintains that the economic nexus between Norwell, its community of license, and the subject communities is supported not only by the local service that WWDP provides and the station’s geographic proximity, but also by similar population characteristics, work forces, economies and governments.²⁷

¹⁶ *Id.* at 4, citing *Nationwide Communications, Inc.*, 10 FCC Rcd 13050, 13053 (1995); *Paragon Cable of Pinellas County*, 10 FCC Rcd 13133, 13137 (1995); *Time Warner Cable*, 10 FCC Rcd 8040, 8044 (1995).

¹⁷ 47 U.S.C. §534(h)(1)(C).

¹⁸ Petition at Exhibit I.

¹⁹ *Id.* at 4 n. 8.

²⁰ *Id.* at 5, citing *Nationwide Communications, Inc.*, 10 FCC Rcd at 13053.

²¹ *Id.* at 6, citing *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 (1997); *Nationwide Communication, Inc.*, 10 FCC Rcd 13050 (1995); *Cablevision of Cleveland*, 12 FCC Rcd 15183 (1997).

²² 47 U.S.C. §534(h)(1)(C).

²³ Petition at Exhibit III.

²⁴ *Id.*

²⁵ *Id.* at Exhibit IV. WWDP states that distances range from 15.3 to 28.5 miles.

²⁶ *Id.* at 7, citing *Must Carry Order*, 8 FCC Rcd at 2977 (1993).

²⁷ Petition at Exhibit V.

10. WWDP points out that, according to the 2002 edition of *Television & Cable Factbook*, Charter carries ten other Boston-market stations on its cable system, all of which are farther away from the subject communities than is WWDP.²⁸ WWDP asserts that the fact that it is geographically closer to the communities at issue than these other Boston-market stations serves to demonstrate that WWDP has a closer nexus to the communities than do these more distant stations.²⁹ In addition, WWDP states that, despite the fact that its Grade B signal is much smaller in relation to these other Boston-market stations, it still must compete with them in an extremely aggressive television market. WWDP states that Charter's carriage of its competitors allows these stations to greatly increase their ability to compete for advertising dollars and audience in the subject communities while, at the same time, leaving WWDP at a distinct economic disadvantage in an area in which it provides local service.³⁰

11. The third statutory factor we must consider is "whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community."³¹ In general, we believe that Congress did not intend this third criterion to operate as a bar to a station's DMA claim whenever other stations could also be shown to serve the communities at issue. Rather, we believe this criterion was intended to enhance a station's claim where it could be shown that other stations do not serve the communities at issue.³² In this case, because other stations do appear to serve the communities in question, this enhancement factor does not appear applicable.

12. The fourth statutory factor concerns "evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community."³³ WWDP concedes that it does not command high viewership ratings in the communities.³⁴ It argues, however, that its lack of ratings, just like its lack of historical carriage, is the direct result of its status as a small specialty station. It therefore maintains that its lack of ratings should not be determinative.³⁵ In any event, WWDP states that the programming it provides is not carried by any other station available to the communities.³⁶

13. The Commission has recognized that specialty stations, such as WWDP, often fail to meet the historic carriage factor and often have no appreciable audience shares due the nature of their programming. Therefore, in analyzing specialty stations' requests to modify television markets, we often look past these criteria to other factors. In this instance, WWDP argues that given its status as a specialty station, its lack of historic carriage and viewership should be given little weight. We agree. However,

²⁸ *Id.* at 8 and Exhibit VI.

²⁹ *Id.* at 9.

³⁰ *Id.*

³¹ 47 U.S.C. § 534(h)(1)(C).

³² See e.g., *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 (1997).

³³ 47 U.S.C. § 534(h)(1)(C).

³⁴ Petition at Exhibit VII.

³⁵ *Id.* at 10.

³⁶ Petition at Exhibit VIII.

while these factors are not controlling, we cannot totally disregard their presence as urged by WWDP.

14. Despite its lack of historic carriage and appreciable audience share, we find that, in this instance, other factors deserve more relative weight. Charter carries numerous other Boston DMA broadcasters on its system serving the communities. In addition, WWDP's transmitter is located approximately 22 miles from the system's headend; WWDP's city of license, Norwell, is approximately 45 miles from Westport, Massachusetts; and its predicted Grade B contour encompasses all of the communities requested. We agree with WWDP that these factors suggest that WWDP provides coverage or other local service to the communities.³⁷ Finally, all of the communities requested for inclusion are located on the eastern edge of the Providence market closest to the Boston DMA. A previous market modification request filed by WWDP, which sought to add communities located near the core of the Providence DMA was denied because a grant of that request would have upset the balance between the Providence and Boston television markets by granting WWDP widespread carriage throughout the Providence market.³⁸ Our action today, however, does not have a similar result. For all the reasons discussed above, we grant WWDP's request.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. §534, and Section 76.59 of the Commission's rules, 47 C.F.R. §76.59, that the captioned petition for special relief (CSR-5970-A), filed by Norwell Television, LLC seeking to add the community of Westport, Massachusetts and the unincorporated areas of Bristol County, Massachusetts **IS GRANTED**.

16. These actions are taken pursuant to authority delegated by Section 0.283 of the Commission's rules.³⁹

FEDERAL COMMUNICATIONS COMMISSION

Steven Broeckaert
Deputy Chief, Policy Division
Media Bureau

³⁷See *Market Modifications and the New York Area of Dominant Influence*, 12 FCC Rcd 12262, 12267 (1997) ("the Bureau's reliance on Grade B contour coverage and distance to the community, in terms of both geography and mileage, is fully supported by the [1992 Cable Act], its legislative history, and Commission precedent.").

³⁸See *Norwell Television LLC*, 16 FCC Rcd 21970 (2001); *app. for rev. pending*.

³⁹47 C.F.R. §0.283.